

## ACT 200

S.B. NO. 3227

A Bill for an Act Relating to Harbors.

*Be It Enacted by the Legislature of the State of Hawaii:*

## PART I

SECTION 1. To meet the economic needs of the state, the harbors division of the department of transportation must provide suitable harbor facilities and berthing piers, which in turn ensures the efficient and timely delivery and shipment of goods imported into the state. Ocean surface transportation is our state's lifeline. It remains the only viable means to service the largest share of Hawaii's economic needs. However, Hawaii's aging commercial harbor system has not kept pace with our growing economy, and Hawaii's commercial ports statewide are experiencing competition for berthing rights for cargo, fuel, and cruise ship activities, and severe congestion in harbor facilities. Harbor users, the state administration, and the legislature recognize that it is now extremely critical to upgrade existing port facilities and develop harbor improvements in an expedited manner. The Hawaii Harbors Users Group, a maritime transportation industry group, was formed in 2005 because the industry recognized that Hawaii is facing a shortage of port facilities statewide. Its goal is to help the State identify and prioritize Hawaii's harbor improvement needs. The Hawaii Harbors Users Group has completed research that predicts that if Hawaii's harbor infrastructure is not improved, the loss of real domestic product (in 2007 dollars) could amount to more than \$50,000,000,000 by the year 2030. In comparison, an assessment of immediate commercial harbor needs statewide is estimated to cost in the range of \$850,000,000.

Under its statutory mandate, the harbors division focuses on essential daily management and operations of the commercial harbor system rather than development of new expansion opportunities. To expeditiously develop critically needed harbor infrastructure improvements and curtail statewide economic hardships that

will occur if the harbors reach maximum cargo handling capacity by the year 2011 as currently projected, the harbors division partnered with Aloha Tower development corporation, an entity with a development-oriented mission, statutory powers, and expertise in the development of state-owned properties for development of Honolulu harbor pursuant to this Act.

The harbors division is additionally stymied by the lack of funding necessary to develop costly wharves and cargo handling terminals and its traditional structure limits its ability to consider development-oriented financing options such as public or private partnerships, but the Aloha Tower development corporation is empowered to do such things. A partnership with the Aloha Tower development corporation, which has jurisdiction over a portion of Honolulu harbor, can also assist the harbors division by providing financial support from its limited commercial development along the downtown urban waterfront. Revenues generated from commercial development are proposed to be directed toward the funding of commercial harbor system infrastructure improvements.

The legislature, together with the administration and key harbor users, recognizes that extraordinary means must be employed to catch up on deferred harbor infrastructure development. Accordingly, the legislature finds that the harbors division should be given further development tools to accomplish the formidable task of bringing the State's commercial harbors up to the standards needed to sustain economic growth. The purpose of this Act is to expand the formal partnership for development of Honolulu harbor between the Aloha Tower development corporation and the department of transportation harbors division to a statewide jurisdiction for the implementation of the commercial harbors modernization plan.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Disposition of public lands for airline, aircraft, airport-related, agricultural processing, cattle feed production, aquaculture, marine, maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, airport-related, agricultural, aquaculture, maritime, and maritime-related ~~[industries;]~~ operations;
- (2) The disposition shall not exceed a maximum term of thirty-five years~~;~~ and], except in the case of maritime and maritime-related operations, which may provide for a maximum term of seventy years; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the ~~[purpose]~~ purposes of this subsection:

~~["agricultural processing"]~~ "Agricultural processing" means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii~~;~~ "airport-related"].

"Airport-related" means a purpose or activity that requires air transportation to achieve that purpose or activity~~], and~~ "maritime-related"].

"Maritime-related" means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry."

SECTION 3. Section 206J-2, Hawaii Revised Statutes, is amended by amending the definition of "development corporation" to read as follows:

"Development corporation" means the Aloha Tower [Development Corporation] development corporation established by section 206J-4."

SECTION 4. Section 206J-4, Hawaii Revised Statutes, is amended by amending its title and subsections (a) and (b) to read as follows:

**“§206J-4 Aloha Tower ~~[Development Corporation;]~~ development corporation; established. (a) There is established the Aloha Tower ~~[Development Corporation;]~~ development corporation, which shall be a public body corporate and politic, a public instrumentality, and an agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35.**

**(b) ~~[The]~~ Except as provided in section 206J-5.5, the development corporation shall consist of a board of directors having seven voting members. The director of business, economic development, and tourism, the director of transportation, the chairperson of the board of land and natural resources, and the mayor of the city and county of Honolulu, or their respective designated representatives, shall serve as ex officio voting members. Three members from the public at large shall be appointed by the governor for staggered terms pursuant to section 26-34 and shall also serve as voting members; provided that no public member shall be an officer or employee of the State or its political subdivisions. All members shall continue in office until their respective successors have been appointed. The board, by a majority vote, shall elect a chairperson from within its membership.”**

SECTION 5. Section 206J-5.5, Hawaii Revised Statutes, is amended to read as follows:

**“~~[§206J-5.5]~~ Partnership with department of transportation for [Honolulu harbor;] the implementation of the commercial harbors modernization plan and the establishment of the harbors modernization group. (a) Consistent with its general powers under this chapter, the development corporation ~~[may]~~ shall establish a subgroup called the harbors modernization group to undertake projects for ~~[Honolulu harbor and its adjacent lands;]~~ the commercial harbors modernization plan in subsection (b), which are under the jurisdiction of the department of transportation. Notwithstanding any provision in section 206J-17 to the contrary, payments to the development corporation for its administrative and operational expenses shall be made by the department of transportation and deposited into the Aloha Tower fund in a subaccount designated for ~~[the particular development project.]~~ commercial harbors modernization plan projects. The department of transportation shall delegate to the development corporation the implementation of commercial harbors modernization plan projects. All projects, prior to implementation by the development corporation, shall be approved by the director of transportation and the governor. After approval by the director of transportation and the governor, the expending authority for the approved projects shall be delegated to the development corporation.**

~~[(b) All appropriations for the development of Honolulu harbor by the development corporation shall be received and administered by the department of transportation. The department of transportation shall retain fiscal management and oversight of all project cost expenditures, budget, and contract approvals.]~~

**(b) The harbors modernization group shall have jurisdiction over harbors projects that shall collectively be known as the commercial harbors modernization plan. These harbor projects shall be as follows:**

- (1) Honolulu harbor. Development of infrastructure, expansion of facilities, and tenant relocations, including the development of the new Kapalama container terminal;**
- (2) Kahului harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the West harbor barge or ferry slip or both, West harbor dredging and breakwater, West**

harbor cruise terminal, Pier 1 fuel line replacement and upgrade, East harbor breakwater, and Pier 2B strengthening;

- (3) Hana Harbor. Development of infrastructure, demolition, as necessary, and expansion of facilities and acquisition of lands;
- (4) Hilo harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the Pier 4 interisland cargo terminal;
- (5) Kawaihae harbor. Development of infrastructure, expansion of facilities, tenant relocations, acquisition of lands, including the Pier 2 terminal and barge improvements, Pier 2 extension and terminal, and Pier 4 and liquid bulk terminals;
- (6) Kalaeloa harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the West harbor infrastructure, Pier 4 dedicated fuel pier, and extension of the fuel line; and
- (7) Nawiliwili harbor. Development of infrastructure, expansion of facilities, tenant relocations, and acquisition of lands, including the new multi-use pier.

(c) For the purposes of this section, the chief executive officer shall have the power to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapter 76.

(d) Land disposition matters in projects identified in the commercial harbors modernization plan, including land acquisition, leasing, and conveyance, and acquisition of easements or rights-of-ways, shall continue to be under the jurisdiction of the board of land and natural resources pursuant to chapter 171.

(e) The harbors modernization group, when acting pursuant to subsection (f), shall retain all the powers of the development corporation under sections 206J-5 to 206J-21.

(f) Except as otherwise provided in this subsection, the harbors modernization group shall be comprised of six voting members appointed by the governor to the development corporation in addition to those members appointed under section 206J-4(b), and pursuant to section 26-34.

The harbors modernization group shall consist of:

- (1) The director of budget and finance, or a designated representative, who shall serve as an ex officio voting member;
- (2) Two public members from the maritime industry who shall be directly involved with a harbor or off-shore mooring facility that is primarily for the movement of commercial cargo, passenger, and fishing vessels entering, leaving, or traveling within the state harbor system, or directly involved with an activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services by means of seaborne transportation; and
- (3) The mayors of the counties of Hawaii, Maui, and Kauai, or their designated representatives, who shall serve as ex officio voting members.

The members of the harbors modernization group shall serve for four year terms and shall continue in office until their respective successors have been appointed. The chairperson of the corporation board shall serve as the chairperson of the harbors modernization group.

The members of the harbors modernization group shall act and be counted in determining quorum and majority for development corporation actions only with respect to directing the planning, design, construction, and financing of the harbor projects identified in the commercial harbors modernization plan. A majority of members of the development corporation and four of the six members of the harbor modernization group shall constitute quorum for matters relating to directing the

planning, design, construction, and financing of the harbor projects identified in the commercial harbors modernization plan. A majority of the voting members of the quorum shall be required to validate any act relating to the harbor projects. These members shall serve without compensation, but each member shall be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

[~~(e)~~] (g) Subject to existing contractual and statutory commitments to the department of transportation for any losses in revenue under this chapter, the development corporation may apply any revenues derived from commercial development projects in the Aloha Tower project area to defray the cost of harbor infrastructure improvements incurred within the [~~State.~~] state.”

SECTION 6. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement projects authorized in section 7 of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in the governor’s discretion, is authorized to use the harbor revenue fund to finance those projects authorized in section 7 of this Act where the method of financing is designated to be by harbor revenue bond funds.

SECTION 7. The following sum, or so much thereof as may be sufficient to accomplish the purposes designated herein, are hereby appropriated or authorized, as the case may be, from the harbor revenue bond funds for the fiscal years beginning July 1, 2008, and ending June 30, 2012, and all intervening fiscal years. The sum appropriated shall be expended by the department of transportation for the purposes of this Act. The department of transportation, as expending agency, shall delegate to the Aloha Tower development corporation the implementation of the capital improvement projects authorized in this Act and subsequent acts, for the projects identified as the commercial harbors modernization plan described in chapter 206J, Hawaii Revised Statutes. After approval of the project by the director of transportation and the governor, the expending authority for the approved projects shall be delegated to the Aloha Tower development corporation. The authorized capital improvement projects are:

1. HMP - Kapalama military reservation improvements, Honolulu harbor, Oahu

- Design and construction for the development of a new container terminal facility.
2. HMP – Kalaeloa Barbers Point harbor infrastructure improvements, Oahu  
Design of utility and infrastructure improvements.
  3. HMP – Kalaeloa Barbers Point harbor fuel pier improvements, Oahu  
Design of new fuel pier and other site-related improvements.
  4. HMP – Pier 4 interisland cargo terminal, Hilo harbor, Hawaii  
Design of additional interisland cargo terminal areas including a pier, yard, roadways, and utilities.
  5. HMP – Kahului harbor land acquisition and improvements, Maui  
Purchase of additional land and subsequent design of improvements for the acquired land.
  6. HMP – Hana harbor, Maui  
Development of infrastructure, demolition, as necessary, and expansion of facilities  
Total funding \$20,000,000
  7. HMP – West harbor barge/ferry slip, Kahului harbor, Maui  
Design for a new West harbor barge/ferry slip and associated site work improvements.
  8. HMP – West harbor dredging and breakwater, Kahului harbor, Maui  
Design for West harbor breakwater, dredging, and associated improvements.
  9. HMP – West harbor cruise terminal, Kahului harbor, Maui  
Design of a cruise terminal including paving, utilities, security, and other site work improvements.
  10. HMP – East harbor breakwater, Kahului harbor, Maui  
Design of the East harbor breakwater and related improvements.
  11. HMP – Pier 2 improvements, Kahului harbor, Maui  
Design of improvements to the pier, including strengthening, bollard replacement, dredging, and environmental permitting.
  12. HMP – Kawaihae harbor development plan, Hawaii  
Development plan for improving new terminal cargo facilities at Kawaihae harbor.
  13. HMP – Pier 2 terminal improvements, Kawaihae harbor, Hawaii  
Design and construction of terminal improvements, including paving, utilities, relocation of the harbor agent’s office, and interim ferry improvements.
  14. HMP – Pier 4, Kawaihae harbor, Hawaii  
Design of a multi-user pier 4 and associated site work.
  15. HMP – Multi-user pier 4, Nawiliwili harbor  
Design of new pier improvements and related site and utility work.
  16. HMP – Construction management support, statewide  
Construction consultant services during construction of harbors modernization plan projects at harbor facilities statewide.
  17. HMP – Harbors division capital improvement program staff cost, statewide  
Costs related to wages and fringe benefits for permanent harbors modernization plan project-funded positions.

The appropriations made for capital improvement projects authorized by this Act shall not lapse unless unencumbered as of June 30, 2012. All appropriations which are unencumbered as of June 30, 2012, shall lapse as of that date.

## PART II

SECTION 8. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§266- Hana harbor; jurisdiction.** Notwithstanding any law to the contrary, the department of transportation shall have jurisdiction and administrative authority over Hana harbor, excluding its small boat ramp facility. The Hana harbor small boat ramp facility shall remain under the jurisdiction and administrative authority of the department of land and natural resources.”

SECTION 9. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of land and natural resources relating to the functions transferred to the department of transportation shall be transferred with the functions to which they relate.

SECTION 10. The jurisdiction, functions, powers, duties, and authority exercised by the department of land and natural resources pursuant to chapter 200, Hawaii Revised Statutes, relating to the Hana harbor, excluding its small boat ramp facility, shall be transferred to and conferred upon the department of transportation by this Act and shall be performed and enforced in the same manner as previously authorized, entitled, or obligated except as otherwise authorized, directed, or instructed by this Act.

The department of transportation shall succeed to all of the rights and powers previously exercised, and all of the duties and obligations incurred, by the department of land and natural resources in the exercise of the functions, powers, duties, and authority transferred, whether such functions, powers, duties, and authority are mentioned in or granted in any law, contract, or other document.

All rules, policies, procedures, guidelines, and other material adopted or developed by the department of land and natural resources to implement the provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of transportation by this Act, shall remain in full force and effect until amended or repealed by the department of transportation pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of land and natural resources or chairperson of the board of land and natural resources in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of transportation or director of transportation as appropriate.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of land and natural resources pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of transportation by this Act, shall remain in full force and effect. Every reference to the department of land and natural resources or the chairperson of the board of land and natural resources therein shall be construed as a reference to the department of transportation or the director of transportation as appropriate.

SECTION 11. All executive orders, revocable permits, easements, and rights of entry for the use of state lands issued and granted to the department of land and natural resources for use in connection with Hana harbor, excluding its small boat ramp facility, shall be withdrawn or terminated and appropriate land disposition for use in connection with Hana harbor, excluding its small boat ramp facility, shall be made by the department of transportation, as appropriate, subsequent to the

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transfer of Hana harbor, excluding its small boat ramp facility, to the department of transportation.

SECTION 12. All acts passed by the legislature during this regular session of 2008, whether enacted before or after the effective date of this Act shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 13. This Act shall be liberally construed in order to accomplish the purposes set forth herein.

### PART III

SECTION 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 15. This Act shall take effect on July 1, 2008; provided that:

- (1) The amendments to section 206J-5.5, Hawaii Revised Statutes, in section 5 of this Act shall be repealed on June 30, 2016, and section 206J-5.5, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
- (2) On June 30, 2016, any moneys or funds under the management of the harbors modernization group pursuant to section 206J-5.5, Hawaii Revised Statutes, shall be deposited into the department of transportation harbor special fund.

(Approved June 20, 2008.)

#### Note

1. Edited pursuant to HRS §23G-16.5.